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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
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| Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them | ) | |
| | ) | PR Docket No. 92-235 |
| and | ) | |
| | ) | |
| Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services | ) | |

To: The Commission

## COMMENTS OF THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

The Alarm Industry Communications Committee (AICC), by its attorney, and pursuant to Rule Section 1.429, submits the following comments with respect to the Further Notice of Proposed Rule Making in PR Docket No. 92-235.

AICC is the communications branch of an industry group representing the interests of the alarm industry. Its related entity, the Central Station Alarm Association (CSAA), performs frequency coordination functions for central station radio operations. The alarm industry uses five pairs of Business Radio Service frequencies in the 450-470 MHz band, as well as the 12.5 kHz offset channels that fall between them, for voice and data communications. The frequencies are heavily used for transmission of burglar, fire and other emergency alarm signals from protected premises to centrally located alarm monitoring facilities operated by its members.

The continued use of these channels (as well as the new channels that would be derived by narrowbanding of the existing channels) for alarm signalling is of vital concern to industry members. More importantly, continued use of this spectrum is vital to the public that relies on

this industry for protection of life and property. By definition, alarm signals sent over these channels involve a potential life threatening situation. As Federal, state and local law enforcement and fire department budgets are increasingly subject to economic constraints, businesses and individuals have come to rely on the private sector to provide burglar, fire, and other security services that were previously provided by local governmental entities. Without those alarm services, and the related private security response patrols provided by these companies, government agencies (at the expense of the taxpayers) would have to significantly increase their patrols and response capability. The alarm industry currently allows these public safety agencies to focus their response to dangerous situations.

## I. Background

In the Report and Order and Further Notice of Proposed Rule Making ("Report and Order") in this proceeding, Mimeo No. FCC 95-255, released June 23, 1995, the Commission has adopted regulations which would ultimately reduce the channel bandwidth in the bands 150-175 MHz and 421-512 MHz to 6.25 kHz or less, or equivalent efficiency. Licensees may achieve this reduction by a two step process, first reducing to 12.5 kHz bandwidth and then to 6.25 kHz, or by going to 6.25 kHz channels in one step when equipment becomes available. Equipment with wider bandwidth may continue to be marketed and used, but new licensees will have to demonstrate that the equipment they use will operate at the same spectrum efficiency as 6.25 kHz equipment.

The Commission has not mandated specific dates by which the bandwidth reduction must be achieved. Instead, the Commission proposes to encourage the bandwidth reduction by type accepting only equipment that will operate in a 12.5 kHz or less bandwidth after August 1, 1996 and type accepting equipment with 6.25 kHz or less bandwidth after January 1, 2005. The use of equipment with wider bandwidth by new licensees or for new systems would be permitted if it has equivalent efficiency of the 6.25 kHz channels.

In the Further Notice of Proposed Rule Making in this proceeding, the Commission proposes "market incentives" to encourage existing licensees to change to more efficient equipment. These incentives include the use of auctions which would grant auction winners the right to control how the channels will be used. Alternatively, the Commission proposes to grant a form of exclusivity to existing licensees in return for changing to more efficient equipment. Finally, the Commission proposes to charge licensees a user fee (either instead of or in addition to the other measures), which fee may be based on the bandwidth used, the area in which the licensee operates, and the population of that area. The greater the bandwidth used, and the greater the population density in the area in which a system operates, the greater the user fee that the licensee would be required to pay. The Commission has also suggested that licensees would be permitted to lease excess capacity on their system for profit. Even though the Commission currently does not have authority to auction shared spectrum, or to charge user fees based on the perceived value of the spectrum, comments have been requested on these options.

## II. Adequate Incentives Already Exist to Spur Transition to Narrowband Technology

AICC disagrees that auctions or user fees are necessary to encourage existing licensees to narrowband their systems. AICC submits that the land mobile frequencies have been used very efficiently and effectively over the decades the Commission has been licensing radio systems. The fact that there are currently over 500,000 land mobile stations and more than 12 million radio units on these frequencies attests to the highly efficient use made of the private land mobile spectrum. The undisputed fact that there are severe frequency shortages in the large metropolitan areas, and many smaller areas as well, does not mean that these frequencies have not been used efficiently. It simply means that there is insufficient spectrum available, and the technology to make more effective use of the spectrum has not been available. As narrowband technology and other methods of increasing spectrum efficiency become more readily available with the recent adoption of new narrowband standards, there will be a natural

incentive to convert to such equipment. Artificial incentives, such as auctions or user fees, will not be necessary.

AICC further believes that high maintenance costs of existing equipment and declining prices for new equipment will bring about equipment changeouts in advance of the migration milestones established by the Commission. Thus, narrowband and other technologies will be deployed ahead of schedule without the incentives proposed in the Further Notice because of the great need for additional channels and the ability of narrowband systems to relieve congestion.

Moreover, the Commission has provided adequate incentive to narrowband by creating a licensing scheme whereby other private user licensees will eventually be operating on the adjacent channel spectrum created by narrowbanding. The Commission has indicated that as these new operations commence using narrowband equipment, they will no doubt create interference to the existing licensees occupying the current channel centers. See Report and Order, supra at para. 40. The Commission itself has stated that this adjacent channel interference will prod wide-band radio users to transition to narrowband radios. Id.

### A. Auctions Should Not Be Applied to Part 90 Private User Spectrum

AICC vehemently opposes the use of auctions for Part 90 spectrum below 512 MHz, whether such auctions are in the form of "overlay" licenses or are limited to new channels created by the narrowbanding process. AICC believes that the Commission should use auctions only to assign unshared, unlicensed spectrum that will be used for commercial purposes, including the spectrum which is being reallocated from Government use, and the remainder of the emerging technologies band. Auctions should not be used in the context of Part 90 shared spectrum. The concept of auctioning "overlay" licenses to the highest bidder only invites large commercial operators and speculators to buy up these spectrum rights, leaving existing users to wither on the vine. Unable to expand or modify their system, these users will be forced

to eventually abandon their systems, stranding billions of dollars of investment nationwide while driving up the costs of their operations and hurting the consumer in the end. Because of the acknowledged crowding on the Part 90 spectrum below 512 MHz, such auctions are not likely to generate significant revenues for the Federal Government. Either the existence of too many incumbents (in urban areas) or the lack of population (in rural areas) will suppress the bid amounts in such auctions. Instead, the likely auction winners will be commercial operators (or cellular "wannabees") that are looking to become spectrum "slumlords." These entities will have a strong incentive to drive incumbent licensees off of the channels, by creating adjacent channel interference situations, and by refusing to cooperate when an existing licensee needs to modify or expand its system. Thus, in exchange for minimum revenue gain, the Commission would be driving hundreds of thousands of existing private users off of their spectrum, thereby harming the productivity and efficiency of American businesses, increasing costs for consumers, and (especially in the case of AICC's members) jeopardizing the safety of the public. The corresponding increase in costs for government entities that will have to take on the safety-related functions served by AICC will far exceed any revenue gain.

Each of the Part 90 private user radio services was created based on a finding that the public interest was best served by setting aside spectrum for the particular use embodied by that service. Nothing in the record of this proceeding has demonstrated that the need for such internal radio uses, and the provision of spectrum for such uses, has disappeared. Auctioning Part 90 spectrum would utterly destroy the concept of private use radio, and would undo five decades of valuable benefits to the public provided through existing Part 90 operations. Where such operations further the provision of safety related services, auctioning overlay licenses on top of these operations would violate the overriding priority given to safety by Section 1 of the Communications Act of 1934, as amended. Therefore, even if Congress affords the Commission expanded auction authority, the Commission's fundamental mandate to further the public interest, and to facilitate safety related uses of radio, should cause it to refrain from

auctioning Part 90 spectrum below 512 MHz. Indeed, the Senate has passed, and the House of Representatives has under consideration, a version of the Budget Reconciliation Act with an express exemption from auctions for any users "that protect the safety of life, health and property and that are not made commercially available to the public." See H.R. 2491, 104th Cong., 1st Sess., Section 3001 (1995). The Senate Committee on the Budget Report indicates that radio uses such as those conducted by AICC and its members should be recognized as safety radio services, and exempt from auctions. Staff of Senate Comm. on the Budget, 104th Cong., 1st Sess., Comm. Recommendations pursuant to H. Con. Res. 67 (S. Print 104-36, 1995).

For these same reasons, the Commission should likewise refrain from auctioning the so-called "newly created" channels that will result from the narrowbanding process. These interstitial frequencies constitute the only spectrum on the horizon that could relieve the severe congestion on existing Part 90 systems in urban areas. The public interest is clearly better served by allowing existing Part 90 users to use these frequencies for trunking and other advanced technologies.

### B. Additional User Fees Are Not Needed As An Economic Incentive, And Could Harm Small Businesses

AICC does not believe that user fees are necessary to create incentives for spectrum efficiency or early migration to narrowband and other technologies. As explained above, sufficient incentive exists to convert to narrowband technologies. Substantial user fees may also encourage unlicensed operation and unauthorized use of frequencies which the Commission may not have the resources to enforce due to shrinking federal budgets. To the extent that AICC could support user fees at all, it would only support small, reasonable user fees which do not make it unaffordable for smaller licensees to continue using their radios.

User fees based on bandwidth, size of operating area, population coverage and population density would be extremely difficult to administer. Each application would be

unique and would have to be carefully reviewed and analyzed to determine the appropriate user fee. This would be even more burdensome if the user fee must be recalculated and paid on a yearly basis. Such practice would cause substantial delays in processing of applications. Furthermore, compiling and including such information for each application that is filed would be burdensome to the public, and reviewing and analyzing this information to determine the appropriate user fee would be burdensome to the Commission. At most, the user fee should be based simply on whether the channel is exclusive or shared.

Finally, if user fees are adopted, they should take into account the shared nature of most private land mobile channels. Such fees should not be based on the value of exclusive commercial spectrum, such as the Personal Communications Services (PCS) or Interactive Video and Data Service (IVDS). The spectrum auction prices bid for PCS and IVDS channels were based on the award of large blocks of exclusive, contiguous spectrum over a wide geographic area. Therefore, a premium was paid for this spectrum. In contrast, Part 90 spectrum is already heavily congested and has significantly smaller bandwidth. The impact of these factors on spectrum value will vary from channel to channel and from market to market. It will be impossible to calculate how much the commercial spectrum "premium" should be discounted due to these factors.

More importantly, the PCS and IVDS auctions were premised on the creation of ubiquitous commercial wireless systems, whereby the auction winner will be able to reap huge profits in the same fashion as their cellular predecessors. The fundamental premise of internal use private systems is not profit making, especially in the case of safety related operations. Therefore, the assessment of user fees based on commercial auctions is wholly inappropriate and adverse to the public interest. At most, any new user fees should merely reflect a reasonably small increase of the regulatory fees already in place.

Finally, if "value-based" user fees are authorized, an eemption should be created for non-Government, non-commercial licensees that use radio to protect the safety of life, health

or property. Such exception would mirror the auction exemption which has been crafted by Congress, and is justified for the same reasons.

### C. The Commission's Exclusivity Proposal Should Be Restricted to Non-Commercial Users

The exclusivity scheme proposed by the Commission, in which existing licensees may obtain a cap on further licensing, will serve the public interest if it is restricted to non-commercial operators seeking to use more efficient technology. However, AICC vehemently opposes allowing such licensees to lease excess capacity on their systems. The need to relieve congestion and to accommodate growth are sufficiently strong incentives. Allowing sale of excess capacity would fundamentally change the nature of these operations, and presumably reclassify them as Commercial Mobile Radio Service operations (subjecting these systems to more stringent regulations, and to the existing auction scheme created by Congress in 1993). Moreover, the resulting profit incentive would draw commercial users to this Part 90 spectrum like vultures, waiting to push internal use systems off the air. The Commission has just put into place a spectrum auction scheme which will rapidly introduce up to a dozen new commercial service providers (in the form of Personal Communications Service, Enhanced Specialized Mobile Radio Service and Mobile Satellite Service licensees) in each market. The public interest is best served by preserving a sanctuary for private, internal use systems, rather than introducing two more competitors into what will be a crowded commercial arena.

There is no valid reason to restrict exclusivity to incumbent licensees. Exclusive, or reasonably interference-free assignments, should be available on recommendation of the frequency coordinator for limited purposes, such as for large systems, for safety related systems, or systems which by their very nature require dedicated frequency assignments (e.g., trunked systems or time division multiple access systems). However, the Commission should afford incumbent licensees an opportunity to attain exclusivity ahead of new licensees. This will

recognize the fact that most incumbent licensees have established their bona fides, and many have suffered the effects of channel congestion for a number of years.

## Conclusion

There will always be a need for private systems. Commercial service providers have a need to serve the widest possible client base to maximize their profits. Many current private land mobile licensees have used these services to fill some communications needs, and will continue to do so. But, because of their nature, commercial service providers will not be able to provide the wide variety of services that the current private land mobile licensees require. For example, portable communications within manufacturing plants (used to control industrial processes, control overhead cranes and provide communications between security guards), and central station alarm signalling operations do not appear to be the type that commercial providers could, or should, provide. The vital public safety and protection services provided by these central station operators should not be jeopardized in the misguided belief that the "highest value" of spectrum is engendered in the highest bidder. The costs to society, including increased crime and greater burden on police and fire departments, will far outweigh the perceived benefits of auctions of "value" based user fees.

Respectfully submitted,

**ALARM INDUSTRY**
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